



Internal Audit Report

Toll Facilities Compliance with Federal Highway Administration (FHWA) Reporting

TxDOT Internal Audit Division

Objective

Determine if TxDOT is in compliance with Federal reporting requirements relating to expenditure of toll revenues and maintenance certifications for fiscal year 2015.

Opinion

Based on the audit scope areas reviewed, control mechanisms are effective and substantially address risk factors and exposures considered significant relative to impacting operational execution and compliance. The organization's system of internal controls provides reasonable assurance that key goals and objectives will be achieved despite control gap corrections and improvement opportunities identified. Control gap corrections and improvement opportunities identified have the potential to negatively impact the achievement of the organization's business/control objectives.

Overall Engagement Assessment		Satisfactory		
Finding				
	Title	Control Design	Operating Effectiveness	Rating
Finding 1	Federal Requirements for Toll Facilities	x	x	Satisfactory

Management concurs with the above findings and prepared management action plans to address deficiencies.

Control Environment

In fiscal year (FY) 2015, Toll Operations Division (TOD) conducted its operations with a team of 28 full time employees. Tolling facilities, which are defined as roads, bridges, tunnels or ferries that charges a fee (or toll) for use, must comply with annual reporting requirements included in 23 U.S.C. § 129(a)(3) and Moving Ahead for Progress in the 21st Century Act (MAP-21), which govern federal participation in toll activity. TOD, on behalf of all Texas tolling entities, collected specific toll facility related reports (e.g. financial statements and maintenance certifications) and provided those to Federal Highway Administration (FHWA) pursuant to those reporting requirements. TOD's management developed policies, procedures, and tools for collecting and tracking this information to assist in completing annual reporting requirements set by federal regulations. A Management Action Plan (MAP) from the Federal Reporting audit (FY15 audit plan) stated that during FY16, TxDOT Administration would transition this process to another division. Until the announced transition of ownership for this MAP in FY16, TOD had maintained their process of collecting maintenance certifications and audited financial statements of toll facilities during FY16.

Summary Results

Finding	Scope Area	Evidence
1	Federal Reporting	<ul style="list-style-type: none"> 3 of 15 (20%) sets of documents provided to TxDOT by other toll entities were determined to be insufficient to meet the compliance requirements of 23 U.S.C. § 129(a)(3). Not all Texas toll facilities are being tracked by Toll Operations Division (TOD). <ul style="list-style-type: none"> Although twenty-three Texas toll facilities are being tracked by TOD, it was assessed that at least twenty-nine Texas toll facilities may exist and may be required to submit maintenance certifications and audited financial statements.

Audit Scope

The audit focused on Toll Operations Division's (TOD) responsibility for reporting maintenance certifications and financial audits of federally funded toll facilities to the Federal Highway Administration (FHWA), as required by federal law in 23 U.S.C. § 129(a)(3), as amended by Moving Ahead for Progress in the 21st Century Act (MAP-21). Audit testing focused on the compliance areas of maintenance and toll revenue distribution (e.g., through audited financial statements) to determine whether tolling entities are following the requirements provided by federal law for the currently identified toll facilities. Reporting was tested for each identified Texas toll road within the fiscal year ending in 2015. During fieldwork this responsibility was transitioned to the Project Finance, Debt & Strategic Contracts Division and process discussions were also conducted with this team.

The engagement was performed by Eva Vargas, Alberto Calderon, Margarita Vasquez, and Lindsay Bibeau (Engagement Lead). The engagement was conducted during the period from March 15, 2016 to May 19, 2016.

Methodology

The following methodology was used to determine whether TOD obtained the proper reporting regarding the toll facility and provided that to FHWA as required by federal laws:

- Interviews with key personnel within the Project Finance, Debt & Strategic Contracts Division and TOD, such as the Quality Assurance/Quality Control team
- Examination of federal law, such as 23 U.S.C. § 129(a)(3), 23 U.S.C. § 166, and Moving Ahead for Progress in the 21st Century Act (MAP-21)
- Review of TOD's Standard Operating Procedures
- Examination of maintenance certifications and audited financial statements of toll facilities obtained during the audit

Background

This report is prepared for the Texas Transportation Commission and for the Administration and Management of TxDOT. The report presents the results of the Toll Facilities Compliance with Federal Highway Administration (FHWA) Reporting which was conducted as part of the Fiscal Year 2016 Audit Plan.

To be eligible for federal participation in the costs of toll facilities, public authorities with jurisdiction over those toll facilities must comply with 23 U.S.C. § 129(a)(3), which includes requirements to submit certifications that the toll facility is being adequately maintained, and which limits the use of toll revenues received from the operation of those toll facilities. Toll revenues must be used as follows:

- Debt service, including the funding of reasonable reserves
- A reasonable return on investment for any private person financing the project
- Costs necessary for improvement, proper operation, and maintenance of the facility
- If the toll facility is subject to a public-private partnership, payment of revenues owed to the other party under the relevant public-private partnership agreement
- If the public authority certifies annually that the tolled facility is adequately maintained, revenues can be spent for any other purpose for which federal funds may be obligated by a State under title 23, U.S.C.

The statute also requires an annual audit of the facility to be performed by the public authority with jurisdiction over the toll facility or by an independent auditor. The audit verifies that the toll facility is adequately maintained and that revenues are expended as previously described. For facilities not operated by TxDOT, TOD has elected to rely on the certifications and audits provided by the various toll entities and, in turn, provide those results to FHWA annually.

In fiscal year (FY) 2016, the responsibility for this process transitioned from TOD to the Project Finance, Debt & Strategic Contracts Division as a result of a decision made by TxDOT's Chief Financial Officer.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards and in conformance with the International Standards for the Professional Practice of Internal Auditing. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. Recommendations to mitigate risks identified were provided to management during the engagement to assist in the formulation of the management action plans included in this report. The Internal Audit Division uses the Committee of Sponsoring Organizations of the Treadway Commission (COSO) Internal Control – Integrated Framework version 2013.

A defined set of control objectives was utilized to focus on operational and compliance goals for the identified scope areas. Our audit opinion is an assessment of the health of the overall control environment based on (1) the effectiveness of the enterprise risk management activities throughout the audit period and (2) the degree to which the defined control objectives were being met. Our audit opinion is not a guarantee against operational sub-optimization or non-compliance, particularly in areas not included in the scope of this audit.

Detailed Finding and Management Action Plans (MAPs)

Finding No. 1: Federal Requirements for Toll Facilities

Condition

TxDOT's current toll facility reporting and collection process developed to comply with 23 U.S.C. § 129(a)(3), and 23 U.S.C. § 166, as amended by Moving Ahead for Progress in the 21st Century Act (MAP-21) requirements is incomplete. The current reporting and collection process does not fully consider 1) adequacy and completeness of required toll facility documentation being submitted, and 2) that all federally funded toll facilities, regardless if the toll facility is subject to a toll agreement, must comply with 23 U.S.C. § 129(a)(3), as amended by MAP -21, and the public authority with jurisdiction over the toll facility must provide the required audit of toll facility records and a maintenance certification.

Effect/Potential Impact

If the limitations on the use of toll revenues are not met, Federal Highway Administration (FHWA) can require the collection of tolls on the non-compliant toll facility to be discontinued until compliance is established.

Criteria

23 U.S.C. § 129(a)(3) states that a public entity with jurisdiction over a toll facility will ensure toll revenues will be used for debt service, including funding of reasonable reserves, for a reasonable return on investment of any private person financing the project, for the costs necessary for the improvement and proper operation and maintenance of the toll facility, and for payment owed to other parties by the party holding the right to toll revenues under a public-private partnership agreement. In addition, the public authority with jurisdiction over a toll facility must conduct their own audit or utilize services of an independent auditor to conduct an annual audit of the toll facility to verify adequate maintenance of the toll facility and that toll revenues are expended as described above. Lastly, MAP-21 removes the need for a 23 U.S.C. § 129(a)(3) toll agreements to be in place, but it preserves the requirements under 23 U.S.C. § 129(a)(3) for the required annual audit and maintenance certifications even for toll facilities without an agreement.

Cause

Existing internal policy does not include all toll facilities across the state that are subject to the audit and maintenance certification requirements in 23 U.S.C. § 129(a)(3) including those facilities for which there is not a requirement for a tolling agreement.

The adequacy of the information provided to TxDOT by toll entities in regards to determining whether the documents meet federal requirements had not been defined internally or by FHWA. Previous guidance had been provided within each of the tolling agreements however MAP-21, passed in 2012, removed the requirement for toll agreements, but retained the audit and maintenance certification requirements.

Evidence

To determine compliance with federal requirements, all documents provided to FHWA by TOD and relating to fiscal year 2015 were reviewed. The following was noted:

- 3 of 15 (20%) of toll facilities reviewed did not provide sufficient documentation for the use of revenues and maintenance certificates for fiscal year 2015.
- An additional twenty-nine Texas toll facilities, as determined by a 2014 Texas state map of all tolling facilities, had no 23 U.S.C. § 129(a)(3) toll agreement prior to MAP-21, but may be subject to the requirements of 23 U.S.C. § 129(a)(3) as amended by MAP-21.

MAP Owner:

Benjamin Asher, Director, Project Finance, Debt & Strategic Contracts Division

MAP 1.1:

Determine a list of all tolling facilities in Texas that utilize federal funding pursuant to 23 U.S.C. § 129(a)(3) and 23 U.S.C. § 166 as amended by MAP-21. Create and document a process to maintain an accurate listing of these roadways.

MAP 1.2:

Create and document a process to maintain compliance with the Federal Highway Administration (FHWA) reporting requirements of 23 U.S.C. § 129(a)(3) and 23 U.S.C. § 166, as amended by MAP-21, to include:

- Make available on an annual basis the required audits of financial statements and maintenance certifications relating to tolling facilities that use federal funding
- An adequacy and/or completeness review as applicable of the documentation provided for state facilities
- An adequacy review of the documentation provided for State facilities
- A plan to maintain compliance when facilities' documentation is not provided. This plan cannot force compliance to facilities that are not owned and operated by TxDOT, but it will document status and make the applicable entity aware of the consequences of non-compliance.

Completion Date:

October 15, 2016

Summary Results Based on Enterprise Risk Management Framework

Audit Results Dashboard		
Toll Facilities Compliance with FHWA Reporting		
Business Objectives (Reporting, Operational, Compliance)		Scope Areas Evaluated
		O, C
ERM Component	Control Activities	Federal Reporting
Control Environment	Organizational Tone	
	Planning	1
	Forecasting	
	Goal-Setting	
	Cost-Benefit Analysis	
Risk Assessment	Business Continuity	
	Evaluations/Analysis	
	Management Action Plans	
Control Activities	Policies/Procedure Development & Maintenance	1
	Approvals/Authorizations	
	Supporting Evidence/Records Availability	1
	Segregation of Duties	
	Safeguarding Assets	
Information & Communication	Information Classification	
	Information Input	
	Information Processing	
	Output/Reporting and Messaging	
Monitoring	Exception Reporting Review	
	Reconciliations/Root-Cause Analysis	1
	Peer Reviews	
	Management Representations	
Scope Area Assessment		
Rating Assessment Grid		<div>Exemplary</div> <div>Satisfactory</div> <div>Needs Improvement</div> <div>Unsatisfactory</div>

Closing Comments

The results of this audit were discussed with the Toll Operations and Project Finance, Debt & Strategic Contracts Divisions on July 26, 2016. We appreciate the assistance and cooperation received from both divisions contacted during this audit.